IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7351 of 1989

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GIRDHAR C KORU

Versus

MANAGING DIRECTOR

Appearance:

MR PK PANCHOLI for Petitioner

MR BR GUPTA for Respondent No. 1

MR PREMAL JOSHI AGP for Respondent No. 2

MR RJ OZA for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 25/08/2000

ORAL JUDGEMENT

Learned advocates Mr. Pancholi appearing for the petitioner and Mr. B.R Gupta appearing for the respondent

no. 1 are not present on call. Heard learned AGP Mr. Premal Joshi for the respondents no. 2 & 3.

2. The Gujarat State Handloom Development Corporation Limited, the respondent no. 1 herein [hereinafter referred to as, `the Corporation'] had on 13th July, 1989 published an advertisement inviting the applications from eligible candidates belonging to Scheduled Tribes for the post of Deputy Manager [Purchase & Processing]. Pursuant to the said advertisement, the petitioner made an application. By communication dated 15th September, 1989, the petitioner was called to remain present for interview on 19th September, 1989. Though the petitioner was the only applicant present for interview and though he was eligible, he was not selected, instead a fresh advertisement was published on 25th September, 1989. Upon inquiry, the petitioner learnt that the petitioner was not considered to be a Scheduled Tribe candidate. Feeling aggrieved, the petitioner has preferred the present petition.

3. It is contended that the petitioner belongs to Halba community which is recognized to be a Scheduled Tribe in the State of Maharashtra. A certificate to that effect has been issued to the petitioner by the Executive Magistrate, Nagpur on 19th July, 1980 and by the City Mamlatdar, Ahmedabad on 1st December, 1988. It is stated that the petitioner is born and brought up in the State of Gujarat and he being of Halba community which is recognized to be a Scheduled Tribe, is entitled to the benefits extended to the Scheduled Tribe persons.

4. The facts undisputed are - the petitioner belongs to Halba community. Halba community is recognized as a Scheduled Tribe in the State of Maharashtra and Halba community is not recognized as a Scheduled Tribe in the State of Gujarat. The question whether such a person can claim the service benefits as a Scheduled Tribe candidate in the State of Gujarat has been finally resolved by the judgment of this Court in the matter of Mahendra Jairambhai Umredkar [1990 (2) GLH (UJ) 15]. The Court relying upon the judgment of the Hon'ble Supreme Court in the matter of Marri Chandra Shekhar Rao vs. Dean, Seth G.S Medical College & Ors., (1990) 3 SCC 130 held that such privileges or right are not available to the Scheduled Castes and Scheduled Tribes in the State where such person has migrated. In the matter of Marri Chandra Shekhar Rao [Supra], the petitioner belonged to Gouda community which is recognized as Scheduled Tribe in the State of Andhra Pradesh. However, at the age of 9 years, the petitioner came to live in Bombay in the State of

Maharashtra. On passing XIIth standard examination, the petitioner applied for admission to medical college on the 7% seats reserved for Scheduled Tribes. The admission was denied to him for the reason that the petitioner was not entitled to Scheduled Tribe status of his origin. Feeling aggrieved, the petitioner preferred a petition under Art. 32 of the Constitution. Having examined the relevant provisions, the Court in paragraph 13 of the judgment held that, `...But when a Scheduled Caste or Tribe migrates, there is no inhibition in migrating but when he migrates, he does not and cannot carry any special rights or privileges attributed to him or granted to him in the original State specified for their State or area or part thereof. If that right is not given in the migrated State, it does not interfere with his constitutional right of equality or of migration or of carrying on his trade, business or profession. Neither Article 14, 16, 19 nor Article 21 is denuded by migration but he must enjoy those rights in accordance with the law if they are otherwise followed in a place where he migrates.'

5. In view of the above settled law, the claim of the petitioner to the privileges as a Scheduled Tribe candidate in the State of Gujarat is not sustainable. Petition is dismissed. Rule is discharged. Interim relief is vacated. The parties shall bear their own costs.

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Prakash*